

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

FORM TO BE USED IN FILING A COMPLAINT
UNDER THE CIVIL RIGHTS ACT, 42 U.S.C. § 1983
(Prisoner Complaint Form)

LR
11 CV 0691

All material filed in this Court is now available via the INTERNET. See Pro Se Privacy Notice for further information.

1. CAPTION OF ACTION

A. Full Name And Prisoner Number of Plaintiff: NOTE: If more than one plaintiff files this action and seeks in forma pauperis status, each plaintiff must submit an in forma pauperis application and a signed Authorization or the only plaintiff to be considered will be the plaintiff who filed an application and Authorization.

1. DAVID A MAROTTA #11B0421
2. _____

-VS-

B. Full Name(s) of Defendant(s) NOTE: Pursuant to Fed.R.Civ.P. 10(a), the names of all parties must appear in the caption. The court may not consider a claim against anyone not identified in this section as a defendant. If you have more than six defendants, you may continue this section on another sheet of paper if you indicate below that you have done so.

1. Officer Alstin 4. Medical
2. Officer Lawrence 5. Groveland Correctional
3. G. J. Krempasky 6. Facility
Deputy Superintendent for Security

2. STATEMENT OF JURISDICTION

This is a civil action seeking relief and/or damages to defend and protect the rights guaranteed by the Constitution of the United States. This action is brought pursuant to 42 U.S.C. § 1983. The Court has jurisdiction over the action pursuant to 28 U.S.C. §§ 1331, 1343(3) and (4), and 2201.

3. PARTIES TO THIS ACTION

PLAINTIFF'S INFORMATION NOTE: To list additional plaintiffs, use this format on another sheet of paper.

Name and Prisoner Number of Plaintiff: DAVID MAROTTA #11B0421
Present Place of Confinement & Address: Groveland Correctional
Facility P.O. Box 50 Sonnen, New
York 14556-0050

Name and Prisoner Number of Plaintiff: _____

Present Place of Confinement & Address: _____

DEFENDANT'S INFORMATION NOTE: To provide information about more defendants than there is room for here, use this format on another sheet of paper.

Name of Defendant: Officer Alstin

(If applicable) Official Position of Defendant: C.O. Law Library staff

(If applicable) Defendant is Sued in _____ Individual and/or ☒ Official Capacity

Address of Defendant: _____

Name of Defendant: Officer Lawrence

(If applicable) Official Position of Defendant: Activities Bldg I think

(If applicable) Defendant is Sued in _____ Individual and/or ☒ Official Capacity

Address of Defendant: _____

Name of Defendant: _____

(If applicable) Official Position of Defendant: _____

(If applicable) Defendant is Sued in _____ Individual and/or _____ Official Capacity

Address of Defendant: _____

4. PREVIOUS LAWSUITS IN STATE AND FEDERAL COURT

A. Have you begun any other lawsuits in state or federal court dealing with the same facts involved in this action?
Yes _____ No ☒

If Yes, complete the next section. NOTE: If you have brought more than one lawsuit dealing with the same facts as this action, use this format to describe the other action(s) on another sheet of paper.

1. Name(s) of the parties to this other lawsuit:

Plaintiff(s): _____

Defendant(s): _____

2. Court (if federal court, name the district; if state court, name the county): _____

3. Docket or Index Number: _____

4. Name of Judge to whom case was assigned: _____

5. The approximate date the action was filed: _____

6. What was the disposition of the case?

Is it still pending? Yes _____ No ☒

If not, give the approximate date it was resolved. _____

Disposition (check the statements which apply):

☐ Dismissed (check the box which indicates why it was dismissed):

☐ By court *sua sponte* as frivolous, malicious or for failing to state a claim upon which relief can be granted;

☐ By court for failure to exhaust administrative remedies;

☐ By court for failure to prosecute, pay filing fee or otherwise respond to a court order;

☐ By court due to your voluntary withdrawal of claim;

☐ Judgment upon motion or after trial entered for

☐ plaintiff

☐ defendant.

B. Have you begun any other lawsuits in federal court which relate to your imprisonment?

Yes _____ No ☒

If Yes, complete the next section. NOTE: *If you have brought more than one other lawsuit dealing with your imprisonment, use this same format to describe the other action(s) on another sheet of paper.*

1. Name(s) of the parties to this other lawsuit:

Plaintiff(s): _____

Defendant(s): _____

2. District Court: _____

3. Docket Number: _____

4. Name of District or Magistrate Judge to whom case was assigned: _____

5. The approximate date the action was filed: _____

6. What was the disposition of the case?

Is it still pending? Yes _____ No ☒

If not, give the approximate date it was resolved. _____

Disposition (check the statements which apply):

☐ Dismissed (check the box which indicates why it was dismissed):

- ☐ By court *sua sponte* as frivolous, malicious or for failing to state a claim upon which relief can be granted;
- ☐ By court for failure to exhaust administrative remedies;
- ☐ By court for failure to prosecute, pay filing fee or otherwise respond to a court order;
- ☐ By court due to your voluntary withdrawal of claim;

☐ Judgment upon motion or after trial entered for

- ☐ plaintiff
- ☐ defendant.

5. STATEMENT OF CLAIM

For your information, the following is a list of some of the most frequently raised grounds for relief in proceedings under 42 U.S.C. § 1983. (This list does not include all possible claims.)

- | | | |
|---------------------------------------------------|-------------------------------------------------------|--------------------------------------------------|
| • Religion | • Access to the Courts | • Search & Seizure |
| • Free Speech | • False Arrest | • Malicious Prosecution <input type="checkbox"/> |
| <input checked="" type="checkbox"/> • Due Process | <input checked="" type="checkbox"/> • Excessive Force | • Denial of Medical Treatment |
| • Equal Protection | • Failure to Protect | • Right to Counsel |

Please note that it is not enough to just list the ground(s) for your action. You **must** include a statement of the facts which you believe support each of your claims. In other words, tell the story of what happened to you but do not use legal jargon.

Fed.R.Civ.P. 8(a) states that a pleading must contain "a short and plain statement of the claim showing that the pleader is entitled to relief." "The function of pleadings under the Federal Rules is to give fair notice of the claim asserted. Fair notice is that which will enable the adverse party to answer and prepare for trial, allow the application of res judicata, and identify the nature of the case so it may be assigned the proper form of trial." Simmons v. Abruzzo, 49 F.3d 83, 86 (2d Cir. 1995).

Fed.R.Civ.P. 10(b) states that "[a]ll averments of claim ... shall be made in numbered paragraphs, the contents of each of which shall be limited as far a practicable to a single set of circumstances."

Exhaustion of Administrative Remedies

Note that according to 42 U.S.C. § 1997e(a), "[n]o action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prison er confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted."

You must provide information about the extent of your efforts to grieve, appeal, or otherwise exhaust your administrative remedies, and you must attach copies of any decisions or other documents which indicate that you have exhausted your remedies for each claim you assert in this action.

A. FIRST CLAIM: On (date of the incident) on 7-19-11 And 7-20-11
defendant (give the **name and position held** of each defendant involved in this incident) staff Officer
of the Law Library Alstin

did the following to me (briefly state what each defendant named above did): on 7-19-11 I went to
the Law Library library to pick up mail. When
C.O. Alstin unwanted sexual comments I left
on 7-20-11 before I when wented down to Law
library. I told the Sgt that working K-Deary
that C.O. Alstin was says unwanted sexual
comments and he start started back up the
mail I got there and follow him out the Hall way

The constitutional basis for this claim under 42 U.S.C. § 1983 is: Excessive force

The relief I am seeking for this claim is (briefly state the relief sought): Medical Care
That was need and still is to this day
demand amount for pain to injury

Exhaustion of Your Administrative Remedies for this Claim:

Did you grieve or appeal this claim? ☒ Yes ☐ No If yes, what was the result? _____

Did you appeal that decision? ☐ Yes ☒ No If yes, what was the result? _____

Attach copies of any documents that indicate that you have exhausted this claim.

If you did not exhaust your administrative remedies, state why you did not do so: I wrote
the Deputy Superintendent for Security
Services

A. SECOND CLAIM: On (date of the incident) Officer Lawrence
defendant (give the **name and position held** of each defendant involved in this incident) That day
he was Hallway Officer in the
Activities Bldg

did the following to me (briefly state what each defendant named above did): C.O. Alstin
Call the Officer Lawrence to stop me
in the Hallway that I had Contraband
and was able show. I didn't have any
Contraband. When he sat at Watch C.O.
Alstin use force on me and hurting
causing me to come off the wall from
the frisk and grabbing 2 times in my balls action
in self-defense.
The constitutional basis for this claim under 42 U.S.C. § 1983 is: Excessive Force

The relief I am seeking for this claim is (briefly state the relief sought): Medical Care
that was need and still is to this day
demand amount for pain to injury

Exhaustion of Your Administrative Remedies for this Claim:

Did you grieve or appeal this claim? ☒ Yes ☐ No If yes, what was the result? _____

Did you appeal that decision? ☐ Yes ☒ No If yes, what was the result? _____

Attach copies of any documents that indicate that you have exhausted this claim.

If you did not exhaust your administrative remedies, state why you did not do so: I even
wrote the

If you have additional claims, use the above format and set them out on additional sheets of paper.

6. RELIEF SOUGHT

Summarize the relief requested by you in each statement of claim above.

Medical care if the injury main come
back. I wasn't taken care of by
them.

Do you want a jury trial? Yes ☒ No ☐

I declare under penalty of perjury that the foregoing is true and correct.

Executed on 8-11-2011
(date)

NOTE: Each plaintiff must sign this complaint and must also sign all subsequent papers filed with the Court.

David Marotta
DAVID MAROTTA 11B0421

Signature(s) of Plaintiff(s)

INMATE GRIEVANCE COMPLAINT

Misc. Complaints
re: Law Library Officer

(E)

Grievance No.

Code: 49
Grievance No. 16504-11

Filed: 7-26-11

Groveland

CORRECTIONAL FACILITY

Date 7-24-2011

Name D. Marotta Dept. No. 11B0421 Housing Unit J Block - 12
Program ABE AM VCB PM

(Please Print or Type - This form must be filed within 21 calendar days of Grievance Incident)*

Description of Problem: (Please make as brief as possible) On 7-20-2011

around 8:15 pm. Why officer Lawrence sat and watch Officer Alstin use force on me and heard me say bet go of my neck 3 time and that my arms injured in pass and here to where I can't hold a pen or type! Make spoon around because I was tired of Alstin trying to hurt me.

Grievant

Signature

Grievance Clerk

O'Brien

Date:

RECEIVED

JUL 26 2011

Advisor Requested ☐ YES ☐ NO Who: INMATE GRIEVANCE SUPV

Action requested by inmate: I would love to see Officer Alstin and Officer Lawrence have happen to them what they did to me!

This Grievance has been informally resolved as follows:

This Informal Resolution is accepted:

(To be completed only if resolved prior to hearing)

Grievant

Signature

Date:

If unresolved, you are entitled to a hearing by the Inmate Grievance Resolution Committee (IGRC).

*An exception to the time limit may be requested under Directive #4040, section 701.6(g).

INMATE GRIEVANCE COMPLAINT

Misc. Complaints
re: Law Library Officer

C

Grievance No. Code:
601-1650411 49Groveland

CORRECTIONAL FACILITY

Filed: 7-26-11Name D. MarottaDept. No. 118061Date 7-22-11Housing Unit K-29Program MCABE AM KCB PM

(Please Print or Type - This form must be filed within 21 calendar days of Grievance Incident)*

Description of Problem: (Please make as brief as possible) On 7-20-2011 I went to law library to get my legal mail and copy done. I had handed my Disbursement and he started Harassing me again and to rip disbursement up. Just before all this had I told Sgt. that was working K-Donor about Alstin harassing me. Why Alstin frisking out in the hallway he was touching me in sexual way. when the other officer was not looking.

Grievant Signature David Marotta

Grievance Clerk O'Brien

Date: _____

Advisor Requested ☒ YES ☐ NOWho: Barry Sgt Barry and Sgt.

Action requested by inmate: And I like to have Prisoners legal Services to handle this too.

that worked K-Donor 7-20-2011

RECEIVED

JUL 26 2011

This Grievance has been informally resolved as follows:

INMATE GRIEVANCE SUPV

This Informal Resolution is accepted:

(To be completed only if resolved prior to hearing)

Grievant
Signature _____

Date: _____

If unresolved, you are entitled to a hearing by the Inmate Grievance Resolution Committee (IGRC).

*An exception to the time limit may be requested under Directive #4040, section 701.6(g).

STATE OF NEW YORK - DEPARTMENT OF CORRECTIONAL SERVICES
INMATE GRIEVANCE COMPLAINTMisc. Complaints
re: law library officer
Grievance No. Gm-11650411 code: 49
Filed: 7-26-11

①

Groveland

CORRECTIONAL FACILITY

Date 7-22-2011Name D. MacrottoDept. No. 11B0821Housing Unit K-1-29 ~~Block~~Program ABEAM UCB

PM

(Please Print or Type - This form must be filed within 21 calendar days of Grievance Incident)*

Description of Problem: (Please make as brief as possible)

on 7-20-2011 right after
C.O. Alstin sexual felt my balls. I + officer
Alstin or C.O. Lawrence took my legal work
pack that I had together for my appeal
of Parole Board and letter from
Albery of Parole and New Attorney that
working for me. I had with me to check the
long book for legal mail.Grievant
Signature

Grievance Clerk

Dawn Macrotto
Bolbrin

RECEIVED

Date: JUL 26 2011

Advisor Requested

☐ YES☐ NO

Who:

INMATE GRIEVANCE SUPV

Action requested by inmate:

They need to find away
to pay for Attorney for me and get
All Copys that was in that pack!

This Grievance has been informally resolved as follows:

This Informal Resolution is accepted:

(To be completed only if resolved prior to hearing)

Grievant
Signature

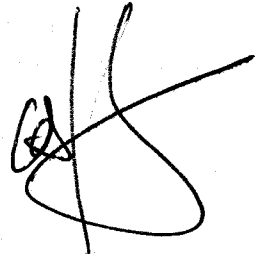
Date:

If unresolved, you are entitled to a hearing by the Inmate Grievance Resolution Committee (IGRC).

*An exception to the time limit may be requested under Directive #4040, section 701.6(g).

**STATE OF NEW YORK -- DEPARTMENT OF CORRECTIONAL SERVICES
GROVELAND CORRECTIONAL FACILITY
MEMORANDUM**

TO: David MAROTTA, (11-B-0421), J-2-01
FROM: G. J. Krempasky, Deputy Superintendent for Security Services
DATE: July 27, 2011
SUBJECT: Response to Your Concerns



=====
Your letter dated July 23, 2011, (addressed to Acting Superintendent Flanagan), has been forwarded to me for response.

The July 20, 2011 event you reference is being addressed through the disciplinary process. Property, (documents which may have been originally in your possession), were found with another inmate, resulting in disciplinary charges against that inmate. The Hearing Officer will decide what will be done with this material.

The July 20, 2011 event regarding your actions, as reported by C.O. Austin, are subject to a separate Tier 3 Disciplinary Hearing, based upon serious violation of standards of behavior. Reporting that event and use of physical force to gain compliance with lawful orders or to control a disruptive inmate who fails to comply with staff direction does not constitute harassment.

Other issues raised within that correspondence are being addressed by appropriate staff as directed by Acting Superintendent Flanagan.

GJK:sc

cc: Acting Superintendent Flanagan
Disciplinary Office
File

he is hold all my
legal work too
And would give it.
And there going be
moving me in 2 weeks
to another Facility

8-11-2011

Dear Sir/Madam

My name is David Marotta and I am from Lockport New York. I was sentence on VOP, DWI, Judge SARA Sheldon Sperrazza to $1\frac{1}{3}$ to 4 yrs Which I accept my guilty to criminal Act.

Allow me to explain my situation. I was admitted to Groveland Correctional Facility around March 10, 2011 After admission. I started began have stomach and intestinal problems. After following facility protocol for all sick call procedures No resolution was imposed. I still suffer daily from internal bleeding from my bowels And also Acid reflux. The pain increased so severely that I was transported to Warsaw Hospital for treatment. An MRI ~~is~~ that was conducted showed that I had a mild stroke. Treatment was completed for the stroke and I returned to Groveland. The Warsaw's Medical staff particularly Dr Grovel recommended a diet change and acid medication until further study could be conducted. Neither of which I received. Approx 2 week after returning from Warsaw.

I started to have severe chest
 A pain again. This in turn brought
 me back to Warsaw. An IV was
 administered by a RN in my right arm
 shortly after admission. I asked
 for an adjustment due to a burning
 sensation through my arm and shoulder
 region. No action was taken for another
 4 days until my release. I returned
 to Groveland for a short period of
 time then transported back to Warsaw
 to an infection in my right and also a
 102 degree fever. The infection was due
 to the poorly administered IV. Surgery
 may be ~~inevitable~~ inevitable to repair the
 nerve/damage within my arm. not only
 do I suffer ~~the~~ from the interstinal
 problems but now there is constant
 pain and ~~arm~~ ~~alternation~~ alternating
 numbness throughout my right arm, shoulder
 and neck let to add to the pain
 on 7-20-2011 I was assaulted by
 Correction staff what add to injury's
~~ea~~ even more now. Poor medical
 practice and lack of concern for
 patient and lack of concern for
 patient discomforts have led to
 unneed pain and stress.
 I was give A-Tier III misbehavior

3

of things. I didn't do. Were I acted in self-defense because these C.O.'s were trying to hurt me because I would not give him the informant C.O. Alstin wanted ~~way~~ why C.O. Alstin had me in the frisk he sexual assaulted me by grabbing my private parts hard 3 times when I got tired of him. hurting me why the other C.O. Lawrence just watch him until I acted in self-defense and my hearing.

I was Violat by "due Process of law" Really was not able to defence call witness. I was denied my rights all together and Medical still denied me treatment and hurt every day too.

And I do have some Mental illness I came in 50% disable and I have made some bad chooses in life. But I don't wanted to come out more hurt and sick then I am now. I know right for from wrong. I have no family support and the thing that keep me going today at 40 yrs old and broke up is hope. but if you don't want to

help me I understand. I am
getting use to good luck we can
help you or sorry. I apologize for
the inconvenience readily available but
I will send one immediately and
cops of my hearing too. ~~and is~~
here the date I week to Warsaw
hospital. 05/16/11 ~~of~~ 05/20/11
05/14/11 These are all
The cops I have my only ones too
so if you please send Back Thank you

Very truly yours
DAVID MAROTTA
11B0421